

1 CLEMENT SETH ROBERTS (SBN 209203)
croberts@orrick.com
2 BAS DE BLANK (SBN 191487)
basdeblank@orrick.com
3 ALYSSA CARIDIS (SBN 260103)
acaridis@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
5 405 Howard Street
San Francisco, CA 94105-2669
6 Telephone: +1 415 773 5700
Facsimile: +1 415 773 5759
7
8 SEAN M. SULLIVAN (*pro hac vice*)
sullivan@ls3ip.com
9 COLE RICHTER (*pro hac vice*)
richter@ls3ip.com
10 LEE SULLIVAN SHEA & SMITH LLP
656 W Randolph St., Floor 5W
Chicago, IL 60661
11 Telephone: +1 312 754 0002
Facsimile: +1 312 754 0003
12
13 *Attorneys for Sonos, Inc.*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

SONOS, INC.,
Plaintiff and Counter-defendant,
v.
GOOGLE LLC,
Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA
**SONOS, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL RE
SONOS'S MOTION IN LIMINE NO. 2**

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Sonos, Inc. (“Sonos”) hereby respectfully
 3 submits this Administrative Motion to Seal (“Administrative Motion”) in connection with
 4 Sonos’s Motion *in Limine* No. 2 (“Sonos’s Motion”) and Google’s Response to Motion *in Limine*
 5 No. 2 (“Google’s Response”). Specifically, Sonos seeks to file under seal the information and/or
 6 document(s) listed below:

DOCUMENT	PORTIONS TO BE SEALED	DESIGNATING PARTY
Exhibit B to Kolker Declaration	Portions highlighted in blue	Sonos
Exhibit E to Kolker Declaration	Portions highlighted in blue	Sonos
Google’s Response	Portions highlighted in blue	Sonos
Exhibit 1 to Williams Declaration	Portions highlighted in yellow	Sonos

13 **II. LEGAL STANDARD**

14 Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document,
 15 or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection
 16 under the law” (*i.e.*, is “sealable”). *See* Civil L.R. 79-5(b). The sealing request must also “be
 17 narrowly tailored to seek sealing only of sealable material.” *Id.*

18 “Historically, courts have recognized a ‘general right to inspect and copy public records
 19 and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of
 20 Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
 21 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong
 22 presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual
 23 Auto. Insurance Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

24 The Ninth Circuit has recognized that two different standards may apply to a request to
 25 seal a document – namely the “compelling reasons” standard or the “good cause” standard.
 26 *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22,
 27 2021) (citing *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir.
 28 2016)). The compelling reasons standard applies to any sealing request made in connection with

1 a motion that is “more than tangentially related to the merits of a case.” *Id.* A party seeking to
 2 seal materials submitted with a motion that is “more than tangentially related to the merits of the
 3 case” must demonstrate that there are “compelling reasons” to keep the documents under seal.
 4 *WhatsApp Inc. v. NSO Grp. Techs. Ltd.*, 491 F. Supp. 3d 584, 596 (N.D. Cal. 2020) (citing *Ctr.*
 5 *for Auto Safety*, 809 F. 3d at 1101-1102). What constitutes a compelling reason is left to the
 6 “sound discretion of the trial court.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon*, 435
 7 U.S. at 599).

8 Under the compelling reasons standard, “a court may seal a record only if it finds a
 9 ‘compelling reason’ to support such treatment.” *Blessing*, 2021 WL 6064006, at *12. In applying
 10 the “compelling reasons” standard, the Ninth Circuit has found appropriate the sealing of
 11 documents where court records could be used “as sources of business information that might
 12 harm a litigant’s competitive standing.” See *Ctr. for Auto Safety*, 809 F.3d at 1097. “Confidential
 13 business information in the form of ‘license agreements, financial terms, details of confidential
 14 licensing negotiations, and business strategies’ satisfies the ‘compelling reasons’ standard.”
 15 *Hetland v. LendingTree, LLC*, No. 19-CV-02288-JSC, 2021 WL 2313386, at *1 (N.D. Cal. May
 16 3, 2021) (quoting *Exeltis USA Inc. v. First Databank, Inc.*, Case No. 17-cv-04810-HSG, 2020
 17 WL 2838812, at *1 (N.D. Cal. June 1, 2020)).

18 **III. THE COURT SHOULD SEAL SONOS’S CONFIDENTIAL MATERIAL**

19 The highlighted portions of the above exhibits and Google’s response contain references
 20 to Sonos’s confidential business information and trade secrets, including technical details of the
 21 operation of Sonos’s technology, such as source code and Sonos’s research and development
 22 processes. The specifics of how this technology operates is confidential information that Sonos
 23 does not share publicly. Thus, public disclosure of such information may lead to competitive
 24 harm as Sonos’s competitors could use these details regarding the architecture and functionality
 25 of these products to gain a competitive advantage in the marketplace with respect to their
 26 competing products. A less restrictive alternative than sealing the portions of the Sonos’s Motion
 27 and the exhibits indicated in the table above would not be sufficient because the information
 28 sought to be sealed is Sonos’s confidential business information and trade secrets and is integral

1 to Sonos's legal arguments (in the case of Exhibits B and E to the Kolker Declaration) or cited by
2 Google (in the case of Google's Response and Exhibit 1 to the Williams Declaration). *See*
3 Declaration of Clement Roberts in Support of Administrative Motion filed concurrently herewith,
4 ¶ 4.

5 **IV. CONCLUSION**

6 In compliance with Civil Local Rule 79-5(d) and (e), unredacted versions of the above-
7 listed documents accompany this Administrative Motion and redacted versions are filed publicly.
8 A proposed order is being filed concurrently herewith. For the foregoing reasons, Sonos
9 respectfully requests that the Court grant Sonos's Administrative Motion.

10

11 Dated: April 25, 2023

ORRICK HERRINGTON & SUTCLIFFE LLP
and
LEE SULLIVAN SHEA & SMITH LLP

12

13 By: /s/ Clement S. Roberts
14 Clement S. Roberts

15

16 *Attorneys for Sonos, Inc.*

17

18

19

20

21

22

23

24

25

26

27

28